

WILLIAMSBURG BOARD OF ZONING APPEALS MINUTES

July 1, 2003

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, July 1 at 3:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Carr, Kafes, Chohany, Knudson, and White. Also present were Zoning Administrator Murphy and Secretary Scott.

CALL TO ORDER AND MINUTES

Chairman Carr called the meeting to order.

Mr. Chohany moved that the minutes of the June 3, 2003 meeting be approved as corrected. The motion was seconded by Mrs. Knudson and carried by roll call vote of 5-0.

PUBLIC HEARINGS

BZA #03-11: Request of George Tsoucalas for a special exception in accordance with Section 21-826 of the Zoning Ordinance to reduce the Resource Protection Area buffer for property located at 8 Wildwood Lane, further identified on Williamsburg Tax Map Number 555-(04)-00-064, in the Port Anne Subdivision, zoned Planned Unit Development. A new single family dwelling is proposed with a portion of the dwelling located at the edge of wetlands requiring a waiver of the 100 foot Resource Protection Area buffer. An option is also proposed to locate a timber retaining wall that encroaches seven feet into the wetlands. The motion to approve the special exception failed due to a tie vote.

Chairman Carr introduced the request for a special exception and invited the applicant to comment.

Mr. Tsoucalas stated that he bought the lot last year unaware of any restrictions due to wetlands. The footprint of the dwelling proposed is close to 2,500 square feet which is the maximum footprint allowed on the 10,000 square feet lot. He

noted that the garage was located under the house to allow for more livable area in the dwelling.

Chairman Carr opened the public hearing.

Henry Swartz, president of the Port Anne Homeowners Association, said that a smaller house moved forward on the lot would be more acceptable, and that the wetlands should not be violated by the retaining wall. He noted that the deck is not impervious and asked if the City of Williamsburg monitors so called “porous cement” and the BMP’s proposed for the property? Mrs. Murphy responded that the City requires certification of the BMP’s before a certificate of occupancy is issued for the dwelling, a BMP maintenance agreement is required before a permit is issued, and the City performs inspections of BMPs after completion.

Mr. Tsoucalas introduced George Banks from Stokes Environmental Associates, Ltd., who produced the report, a *Water Quality Impact Assessment for Encroachment into the RPA* supporting this request. Mr. Banks noted that the impervious pavement of the driveway, infiltration trench and proposed dry wells would absorb water before final discharged into the wetland area. He said a porous interlocking pavement will be used on the driveway; stormwater infiltration systems will be used beneath the driveway, and within flat areas on the site to maximize stormwater infiltration from the site. It was noted that currently there is no filter between all the water that flows from the tennis courts and parking lot for the clubhouse, and the wetlands.

There being no additional comments Chairman Carr closed the public hearing.

Mrs. Murphy stated that if Mr. Tsoucalas’ request is approved, he will need to construct a BMP according to approved plans prior to receiving a Certificate of Occupancy and enter into a BMP maintenance agreement with the City. She noted that the maintenance agreement would transfer with the property. Mrs. Murphy also noted the small buildable area outside the Chesapeake Bay Protection Area on the lot would require a waiver from this Board to construct a dwelling on this lot.

Mrs. White stated that she will abstain from discussion and voting on this case due to a conflict of interest.

Some of the Board’s comments follow:

- Mrs. Knudson stated that the encroachment into the RPA is huge, and although she is sorry to have to oppose the request, the applicant/purchaser should have been told about the Chesapeake Bay Act restrictions. If this request is approved, others may follow. What purpose does the Chesapeake Bay Act provide? Vegetation filters pollutants and the more we allow encroachment into the wetlands, the less cleaning of

these pollutants will be done. She concluded her comments by saying that maybe a very small house could be built on this lot, but not a large one.

- Mr. Kafes said he will vote in favor of the request because it complies with setbacks, Port Anne and zoning code requirements. It is a single family residence and as such will not produce much in the way of pollutants. Also, as has been previously noted, there is already a lot of runoff from the area that is not filtered. To be a buildable lot, any proposal will need to encroach into the RPA. The incremental danger is minimal.
- Mr. Chohany agreed with Mr. Kafes, stating that this is a hardship issue due to the topography and the unknown RPA encroachment at the time of purchase. He added that the footprint is not exorbitant at 2,500 square feet and to move it forward would cause it to be out of character with the community.
- Mr. Carr stated that a precedent may be established from this request. The precedent would most likely be used when the owners of the adjacent lot #63 want to build. As Mrs. Knudson noted, additional development will again add to wetlands pollutants. He said although he has concerns with this request and usually votes no on such cases, he may be inclined to approve the special exception, given this case did not involve a large house. However, when Mrs. Murphy clarified that the footprint is approximately 2,500 square feet and the overall dwelling would be larger than 4,500 square feet, Mr. Carr rescinded his comment.

Mr. Kafes pointed out that the house proposed is of the size permitted on this lot, and the degree to which this house or any house will contribute to pollution is minimal. He added that the lawn area is small; therefore, lawn fertilizers would be a minimal factor.

Mr. Kafes moved that the special exception be granted contingent upon the following:

1. The dimensions and design calculations for the infiltration trench and interlocking porous pavement must be submitted and approved by the City prior to obtaining any land disturbing or building permits for the property.
2. A BMP maintenance agreement must be submitted, approved and recorded for the infiltration trench, porous pavement and dry wells before any land disturbing or building permits can be issued for the property.
3. A certification letter acceptable to the City that the infiltration trench, porous pavement and dry wells were installed as approved by the City before a Certificate of Occupancy can be issued for the dwelling.
4. A landscape plan must be submitted and approved by the Zoning Administrator with all plant material being installed prior to the issuance of a Certificate of Occupancy for the dwelling to mitigate the nonpoint source pollution.

Mr. Kafes also moved that the seven-foot, timber retaining wall which will encroach into the wetlands, be approved.

Mr. Chohany seconded the motion which failed on a tie vote of 2-2-1.

Recorded vote on the motion:

Aye: Chohany, Kafes

No: Carr, Knudson

Abstain: White

Absent: None

Mr. Carr noted that the applicant can return to the Board with another proposal or he can appeal the Board's decision to Circuit Court.

OLD BUSINESS

Law Suit

Mrs. Murphy gave a brief update regarding the pending lawsuit.

NEW BUSINESS - None

There being no further business the meeting adjourned at 4:00.

Respectfully submitted,

Michael P. Chohany, Secretary
Board of Zoning Appeals